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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 784

DORIS WATKINS, LARRY D. ROBINSON, JANELLE HYLTON, and CLARENCE L. PROCTOR,

Petitioners,

—v.—

THE SUPERIOR COURT, LOS ANGELES COUNTY, CALIFORNIA, and J. HOWARD ZIEMANN, JOSEPH L. CALL, FRED P. PERRAGA, JOHN G. BARNES, VERNON SPENCER, MARK BRANDLER, ROBERT CLIFTON, BERNARD LAWLER, JOSEPH A. WAPNER, RAYMOND ROBERTS, BERNARD S. SELBER, RICHARD S. C. HAYDEN, EDWARD C. OLSON, KATHLEEN PARKER, MARIO L. CLINCO, JOSEPH SPRANKLE, JR., and ROBERT FEINERMAN as Judges

THE MUNICIPAL COURT OF LOS ANGELES, CALIFORNIA, and MAURICE T. LEADER, IRWIN J. NEBRON and PHILIP M. SAETA as Judges

THE JUVENILE COURT OF LOS ANGELES COUNTY CALIFORNIA, and WILLIAM E. MACSADEN as Judge

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEALS OF CALIFORNIA, SECOND DISTRICT

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THE SUPERIOR COURT, LOS ANGELES COUNTY, CALIFORNIA, *et al.*

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEALS OF CALIFORNIA, SECOND DISTRICT

Petitioners pray that a writ of certiorari issue to review the judgment of the California District Court of Appeals, Second District, entered in the above-entitled case on October 18, 1965.

Citation to Decisions Below

The decisions of the California District Court of Appeals, Second District, and of the Supreme Court of California are not reported and are set forth in Appendix A *infra*, pp. 15a and 20a.

Jurisdiction

The judgment of the California District Court of Appeals, Second District, denying petitioners' petition for mandamus and prohibition without opinion was entered on October 18, 1965. Petition for hearing to review the decision of the Court of Appeals was filed in the Supreme Court of California and was denied without opinion on November 3, 1965.

Jurisdiction of this Court is invoked pursuant to Title 28 U. S. C. Section 1257(3), petitioners having asserted below, and asserting here, deprivation of rights, privileges, and immunities secured by the Constitution of the United States.

The denial of writs of mandamus and prohibition to restrain a lower court proceeding was a final judgment of the state court that can be reviewed by writ of certiorari. See, *Rescue Army* v. *Municipal Court of The City of Los Angeles,* 331 U. S. 549.

Since the granting of a petition for hearing to review the lower court's determination is a matter of discretion with the Supreme Court of California, certiorari in this Court lies to review the decision of the District Court of Appeals. See, *Hammerstein* v. *Superior Court of California,* 341 U. S. 491.

Question Presented

Some 4,000 persons, including petitioners, were arrested over a nine-day period in Los Angeles County in August, 1965; the great majority are unable to pay for counsel. Respondent judges have in almost all instances appointed the county public defender whose office consists of 108 attorneys, one-half of whom regularly handle criminal cases. The 4,000 new cases have in a short time been superimposed on a yearly load of 10,000 cases. Different public defenders have represented defendants at different stages of the proceedings; counsel have been able to consult with clients for periods of only five to ten minutes before important proceedings. Petitioners petitioned the Supreme Court of California and the District Court of Appeals of California for writs of prohibition and mandamus on the grounds that they were being denied the right to adequate representation in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States; no responsive pleading has ever been filed. The petitions were denied without hearing and without opinion.

On this record, did the California courts err in denying writs of mandamus and prohibition that would:

(a) require the trial judges to appoint counsel, who stood ready to accept appointment, other than the public defender, or otherwise assure adequate representation of the members of petitioners' class;

(b) require the appointment of counsel as soon after arrest as practicable and before initial arraignment?

Constitutional and Statutory Provisions Involved

This case involves Section 1 of the Fourteenth Amendment to the Constitution of the United States.

This case involves also the following statutes of the State of California: California Penal Code §§858, 859, 859a, 987, and 987a; California Code of Civil Procedure §§1084-1086, 1102-1103. (The text of these sections is set out in full in Appendix B *infra*.)

Statement

Between August 11 and August 20, 1965, rioting occurred in the Watts area of Los Angeles County, California. Approximately 4,000 persons, including named petitioners, were arrested and charged with various felonies, misdemeanors, and juvenile offenses. Substantially all the persons arrested have had bail set in initial arraignments, have had preliminary examinations completed, and have been given a date for trial.

The named petitioners are:

(1) Doris Watkins, who was charged with burglary. At arraignment she was unrepresented by counsel, and bail was set at $4,900, which she was unable to meet. At the preliminary hearing the court appointed a member of the Los Angeles County Public Defender's office; he talked with her for only a brief period to get information relative to a reduction in bail. The court found probable cause for holding her for trial, and Mrs. Watkins was released under $250 bail. Later, the petitioner plead not guilty at a hearing where she was represented by a different member

of the public defender's office. Subsequently, petitioner had a 25-minute interview with another attorney from the public defender's office (R. pp. 13-14; Appendix A, pp. 11a-12a).

(2) Larry D. Robinson was charged with disturbing the peace. At arraignment, where petitioner was not represented, he plead not guilty and bail was set at $1,000. Although petitioner informed the court he wished representation by private counsel, the court urged him to accept the public defender. Petitioner is not able to pay private counsel (R. p. 16; Appendix A, p. 14a).

(3) Clarence Proctor was charged with burglary. He could not meet bail of $4,750 and remained in jail from August 14, 1965, until his trial on November 17, 1965. Petitioner was unrepresented at the hearing when bail was set. At the preliminary hearing on August 20, 1965, the court appointed the public defender. The attorney consulted with petitioner for approximately two minutes concerning the circumstances of his arrest. Bail was reduced to $2,500, which petitioner was also unable to meet. Despite petitioner's letters to the public defender's office requesting consultation, no one from the office interviewed him until October 3, 1965. At that time a member of the office told petitioner that he had been very busy; they consulted for about five or six minutes (R. pp. 14-16; Appendix A, pp. 12a-14a).

(4) Janelle Hylton was arrested and charged with burglary. At arraignment on August 19, 1965, she was unrepresented by counsel and bail was set at $4,500, which petitioner was unable to meet. At the preliminary hearing on August 24, the public defender was appointed and he interviewed petitioner for approximately five minutes. The

court bound her over for trial and she was released on her own recognizance. Up to the time of the filing of this suit, petitioner had had two other brief interviews with different members of the public defender's office at her two appearances to enter a plea (R. pp. 12-13; App. A, pp. 10a-11a).[1]

On October 8, 1965, pursuant to Sections 1085ff. and 1102ff. of the California Code of Civil Procedure, petitioners filed on behalf of themselves, and all others arrested and charged with crimes arising out of the riots, a petition

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[1] While the following information was not before the California courts and, therefore, not in the record, petitioners bring to the Court's attention the following proceedings, which are a matter of public record, but occurred subsequent to filing the petition:

Petitioners Watkins and Proctor were tried and convicted of trespass after the denial of relief in the California courts, on November 9 and 17, respectively. Proctor was sentenced to five days' imprisonment; a hearing for probation and sentencing of petitioner Watkins is set for December 3, 1965. Both petitioners were represented by the public defender. These proceedings do not, of course, moot the individual or representative claims of the petitioners. As to petitioner Watkins, since the trial court has not finally disposed of her case under California law a court, by writ of prohibition, may void her conviction in order to afford complete relief. See, Boone, *Prohibition: Use of The Writ of Restraint in California,* 15 Hastings L. J. 161, 162 and cases cited therein. At the time of filing, the petitioners proceeded as representatives of of a class of untried defendants, many of whom have not yet been tried. Unavailability of adequate representation for all 4,000 defendants was the occasion for the filing of this proceeding for prerogative writs: the same unavailability of counsel required proceeding in representative form; if the State of California, by its unilateral decision to try the individual petitioners can defeat this class action, there is no way in which the fundamental constitutional claims of this large class of persons can be protected.

Petitioners Hylton and Robinson were represented by private counsel secured by the Los Angeles NAACP chapter subsequent to the filing of this action. They were tried on November 10th and 22nd, 1965, respectively, and both were acquitted.

for a writ of prohibition and mandamus in the Supreme Court of California (R. pp. 1-19; App. A, pp. 1a-14a). No responsive pleading was filed. The Supreme Court, on its own motion, referred the petition to the California District Court of Appeals, Second District, for determination. The petition claimed that petitioners' right to adequate representation by counsel, guaranteed by the Fourteenth Amendment to the Constitution of the United States, was being abridged, and asked the Court to require respondent judges to:

> (1) Appoint counsel with adequate preparation, investigation and counseling before conducting any further proceedings;
>
> (2) Nullify any prior proceedings in which Petitioners or members of their class, after securing adequate counsel, can demonstrate they were prejudiced by the lack of counsel;
>
> (3) Furnish the members of Petitioners' class with lists of private counsel, if the Public Defender's Office is found to have an inordinate case load, and to provide compensation for such counsel as are chosen by the indigent defendants (R. p. 9; App. A, p. 7a).

Although no responsive pleadings was filed, the district court denied the petition without a hearing and without opinion on October 18, 1965 (R. p. 20; App. A, p. 15a).

Subsequently, on October 25, 1965, petitioners filed in the Supreme Court of California their petition for hearing, pursuant to Rule 28 of that court. The petition sought to transfer the cause to that court to review the denial of the petition for prohibition and mandamus and raised the same

federal constitutional claims urged below (App. A, pp. 16a-19a). In addition, petitioners moved for a temporary restraining order restraining the respondents from conducting any further criminal trials or juvenile proceedings affecting members of petitioners' class pending disposition of the petition for hearing. Again, no responsive pleading was filed.

On November 3, 1965, the Supreme Court of California denied the petition for hearing summarily, without opinion (App. A, p. 20a). Again, petitioners were not given the opportunity to present proof of their allegations. Since there were neither responsive pleadings filed nor evidence taken, the allegations concerning the individual petitioners must be taken as true. The following allegations relating to the class of 4,000 defendants which the individual petitioners represent are also undenied and similarly must be taken as true.

Petitioners are unable to pay for the services of private counsel. Of the 4,000 persons arrested and charged with various felonies and misdemeanors, virtually all are similarly indigent and unable to pay for counsel of their choice (R. pp. 7-8; App. A, pp. 5a-6a). Moreover, at the time of the bringing of this action, there were more than 700 defendants still in jail because they could not make bail.

Pursuant to California procedure, the individual respondents are the twenty-three judges conducting the pre-trial and trial phases of the prosecutions of petitioners and other members of their class, i.e., persons arrested during the riots. They are charged under California law to satisfy the requirement imposed by the Fourteenth Amendment to the United States Constitution that all persons charged

with criminal violations, regardless of financial ability, be afforded adequate representation by counsel.[2] They have purported to discharge their duty by appointing the Los Angeles County Public Defender's Office to represent all but a few of the indigent defendants who appear without counsel (R. pp. 5-6; App. A, p. 4a).

The Los Angeles County Public Defender's Office consists of approximately 108 lawyers,[3] of whom about one-half are assigned to handle criminal cases at the pre-trial and trial stages. On the average, the case load of the Office has been 10,000 cases per year. Thus, the Office has been charged with defending 4,000 additional cases within a brief period of time without the expansion of its legal and investigative staff that would be required to deal with such an unprecedented load (R. pp. 5-6; App. A, pp. 4a, 18a).

The prosecutions of the persons arrested have been proceeding rapidly (R. pp. 7-8; App. A, p. 6a). Since the end of August, 1965, virtually all the defendants have been arraigned, have had pre-trial hearings, and have had trial dates set. Largely because of the lack of adequate legal advice immediately after arrest, bail at two or three times

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[2] Calif. Penal Code, §§858, 859, 987a. See Appendix B, *infra*.

[3] According to the official report of the Public Defender's Office for 1964, there were 66 lawyers in the office. (See Silverstein, *Defense of the Poor in Criminal Cases in American State Courts*, Vol. II, p. 60 (American Bar Foundation, 1965).) The figure of 108 includes, according to information obtained by petitioners' counsel, those hired since the beginning of 1965. Of course, a hearing at which evidence could be developed would present a factually correct record.

the normal amount was set by some of the respondent judges in many instances (R. p. 4; App. A, p. 3a).[4]

As a result of the large additional number of defendants, the Public Defender's Office has been unable to provide adequate counsel to those it represents. For many defendants, a different public defender has appeared at each stage of the pre-trial proceedings (R. p. 5; App. A, p. 4a). In many instances, the various public defenders assigned indigents have consulted with defendants only five to ten minutes before they were to appear at a preliminary hearing (R. pp. 5, 12, 15; App. A, pp. 4a, 10a, 13a). Although many defendants have asked that private counsel be assigned and compensated by the court, and such private counsel were available for court-appointment through lists furnished by bar associations and the Los Angeles Chapter of the NAACP, the respondent judges have refused to appoint private counsel in sufficient numbers to relieve the public defender's office (R. pp. 6, 16; App. A, pp. 4a-5a, 14a).

How the Federal Questions Were Raised and Decided Below

In their petition for writs of mandamus and prohibition, petitioners alleged that unless the relief sought was granted they would continue to suffer the denial of their rights under the Fourteenth Amendment to the Constitution of the United States and the Constitution of California. It

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[4] In addition, members of the class are being tried daily, with the four original petitioners herein having been tried already. On the basis of information they have received, counsel for petitioners estimates that about two-thirds of those arrested and who have not plead guilty have been tried, and all will be tried in the next one to two months.

was claimed that their continued prosecutions under the circumstances alleged in their petition would result in the effective denial of their right to adequate representation by counsel guaranteed by the due process and equal protection clauses of the Fourteenth Amendment. Also, it was alleged that the respondents had no other adequate remedy, since a lack of proper legal counsel would render it impossible for the petitioners and the members of their class to preserve their constitutional claims and to perfect appeals to raise these issues. These same claims were made in the petition for hearing filed in the Supreme Court of California.

Since, as will be shown below, there exists no adequate state ground for the decision of the court below, it must be deemed that it rested on a decision on petitioners' federal claims. See, *Konigsberg* v. *State Bar,* 353 U. S. 252, 253-258.

Reasons for Granting the Writ

This petition, the allegations of which have never been denied, presents important questions concerning the obligation of a state to provide adequate counsel for indigent defendants. The prosecutions involved herein arose out of rioting which broke out in the Watts area of Los Angeles and which continued for a number of days last summer. The riots—which this petition certainly does not attempt to justify—occurred because of the continued injustices that the poor believe are inflicted on them by an indifferent, affluent society.

In the way it is conducting these prosecutions, the State of California is merely perpetuating the same injustices which gave rise to the disturbances. It is trying thousands

of indigents in a rapid, routinized manner which fails to ensure that every individual will have at least the protection of counsel who is able to devote the time required to consult with his client fully and to prepare adequately his defense. To these defendants justice can appear only as an impersonal machine, a mere tool of the same powers in society that have put them and kept them in their position of poverty.

In this case petitioners are attempting, by a procedure clearly appropriate under California law (see *infra*), to correct this situation and gain for all those arrested in Watts proper representation by counsel. The present proceeding is the only way that the rights of the Watts defendants can be adequately vindicated. Day by day, defendants are being held in default of exorbitant bail, are being tried without adequate preparation of their cases and, perhaps most important, are being forced by all of the pressures of their situation, including lack of needed legal advice, to plead guilty to the charges against them. If relief is not given here, there exists no procedure by which the constitutional claims of so large a number of defendants can, with any fair assurance, be presented to any court for hearing. They must have adequate counsel now to advise them concerning their pleas, to ensure that all constitutional defenses will be raised and preserved and to enable them to perfect appeals.

However, the State of California has conspicuously ignored the serious issues raised by this action. Neither the respondent judges nor the State have filed responsive papers. Petitioners have been denied in both the District Court of Appeals and the Supreme Court of California all opportunity for hearing, at which they may offer proof

and argue the validity of their constitutional claims. Their petitions have been denied summarily without opinion with the result that petitioners have not been given a hint of the basis for denial.

The very manner in which the State of California has thus callously disposed of the present case reinforces the denials of federal constitutional rights of the petitioners in their criminal prosecutions and makes it imperative that this Court accept jurisdiction to affirm the obligation of the State for fundamental fairness and civilized procedure in all criminal proceedings, regardless of the indigency of the defendants or the abhorrence to the community of the offenses with which they are charged. Justice consistent with due process and equal protection of the law cannot be done, nor the confidence in law essential to its maintenance be preserved, by the careless and mechanical processing, indifferent to fundamental constitutional guarantees, which California has given and is giving these serious criminal prosecutions.

I.

Petitioners Adequately Alleged in Their Petition for Writ of Prohibition and Mandamus Facts That Establish That Their Continued Prosecutions Violate Their Right to Adequate Representation by Counsel in Violation of the Fourteenth Amendment to the Constitution of the United States.

A. Under California Law, Petition for Writ of Mandamus and Prohibition Is the Proper Remedy.

California law makes clear that the writ of prohibition and mandamus was the proper remedy if petitioners' federal constitutional claims are sustainable.

In a case closely analogous to this, the Supreme Court of California was petitioned for a writ of mandamus, and the court issued its writ of prohibition to halt a criminal trial until the petitioner had been properly informed of his right to counsel. *Bogart* v. *Superior Court of Los Angeles County,* 60 Cal. 2d 436, 34 Cal. Rptr. 850, 386 P. 2d 474 (1963).

Prohibition has issued to stop a criminal proceeding where the defendant was held to answer solely on illegally obtained evidence (*Badillo* v. *Superior Court,* 46 Cal. 2d 269, 294 P. 2d 23 (1956)); and where the prosecution was being carried out under a statute or ordinance claimed to be unconstitutional or otherwise invalid or inoperative (*Whitney* v. *Municipal Court,* 58 Cal. 2d 907, 27 Cal. Rptr. 16, 377 P. 2d 80 (1962); *Lambert* v. *Municipal Court,* 53 Cal. 2d 690, 3 Cal. Rptr. 168, 349 P. 2d 984 (1960); *Rescue Army* v. *Municipal Court,* 28 Cal. 2d 460, 171 P. 2d 8 (1946).) And similarly pre-trial mandamus has been used to review discovery orders of trial courts in criminal cases.

Powell v. *Superior Court*, 48 Cal. 2d 704, 312 P. 2d 698 (1957); *Vance* v. *Superior Court*, 51 Cal. 2d 92, 330 P. 2d 773 (1958); *Funk* v. *Superior Court*, 52 Cal. 2d 423, 340 P. 2d 593 (1959).

B. The Allegations of the Petitioner for Prohibition and Mandamus Establish a Denial of Due Process in Violation of the Fourteenth Amendment to the Constitution of the United States in That Petitioners Have Been Denied Adequate Representation by Counsel.

Since there were no responsive pleadings filed, no hearing afforded, no opportunity offered to develop facts by use of compulsory process, and no findings of fact made by either of the state courts below, the facts alleged in the petitions filed in the lower courts must be taken as true. Therefore, the only issue presented here is whether the allegations of petitioners are sufficient to establish a denial of petitioners' right to adequate representation by counsel. See, *Pennsylvania ex rel. Herman* v. *Claudy*, 350 U. S. 116; *Coleman* v. *Alabama*, 377 U. S. 129, 133.

Briefly summarized, the petition in the California courts alleged that petitioners and members of their class were, because of their indigency, being forced through the mills of justice in rapid order while being denied adequate counsel by the actions of the respondent courts and judges. Four thousand indigent persons were arrested in a period of nine to ten days (R. pp. 2, 5; App. A, pp. 2a, 4a). They were assigned the public defender as counsel, despite the fact that this resulted in a 40% increase in that office's annual case load over a span of two weeks. Numerous defendants requested that private counsel be appointed and compensated by the court (R. pp. 5-6; App. A, pp. 4a-5a). In spite of the enormous burden on the public defender, and

in spite of there being many private attorneys willing to accept appointments if compensated, the judges have refused these requests *(Ibid.)*. The result has been that, typically, defendants have had only hurried consultations with public defenders prior to their proceedings (R. p. 5; App. A, p. 4a).

The right to counsel is a requirement of due process of law under the Fourteenth Amendment. The right does not depend on the defendant's ability to pay for counsel, and where the defendant is indigent the court must furnish an attorney in all cases, felonies as well as misdemeanors. *Gideon* v. *Wainwright*, 372 U. S. 335; *Harvey* v. *Mississippi*, 340 F. 2d 263 (5th Cir. 1965).

In the present case, of course, counsel has been furnished in the form of the public defender. However, the right to counsel established by the Fourteenth Amendment is the right to adequate representation. *Powell* v. *Alabama*, 287 U. S. 45 (1932). The analogy between *Powell* and the present case is extremely close in that there the trial court appointed "all the members of the bar" (287 U. S. at 53) to represent the defendants. It was not until the day of trial that a particular lawyer was assigned the responsibility of conducting the defense. Thus, there was not enough time for counsel to give the attention and preparation necessary for an adequate defense. In the present case as well, it is petitioners' contention that the counsel could not possibly be deemed adequate.

Here, the issue presented by the facts is clear; whether 50 to 60 attorneys can adequately represent 4,000 defendants in a period of five months through the whole criminal pre-trial and trial process, including arraignments, preliminary hearings, preparation for trials and the trials them-

selves while those lawyers have obligations which otherwise fully occupy them. In a report issued by the American Bar Foundation in July, 1965, the Los Angeles public defender, "indicated that though in general he had adequate funds to run his office, he could use several additional deputies and more administrative personnel." Silverstein, *Defense of the Poor in Criminal Cases in American State Courts,* Vol. II, p. 75 (American Bar Foundation, 1965). This statement was made, of course, prior to the riots and arrests which led to a 40% increase in the office's case load. The uncontradicted allegations of the petitions are that the lawyers in the public defender's office have not been able to spend the time with petitioners and the other members of their class that would be necessary to adequately prepare defenses against the serious charges involved.[6]

As this Court has said, "The defendant needs counsel and counsel needs time." *Hawk* v. *Olson,* 326 U. S. 271, 278 (1945). Many courts have recognized that adequate representation is possible only when counsel is able to and does, in fact, spend sufficient time consulting with his client, investigating the circumstances of the case, and preparing for trial. See, e.g., *Jones* v. *Cunningham,* 313 F. 2d 347 (4th Cir. 1963); *Johnson* v. *United States,* 328 F. 2d 605

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[6] Petitioners do not intend any criticism of the Los Angeles Public Defender's Office or of the public defender system in general. In the normal situation it may be adequate. Under circumstances such as obtained here, however, the office is simply not capable, because of a shortage in manpower, to handle the situation. For a comprehensive report and recommendations on various means of providing representation for the poor, including an analysis of the relative merits of public defender systems, see *Report of the Joint Committee on Legal Aid of the Province of Ontario* (March, 1965), generally, and particularly at pp. 101-109.

(5th Cir. 1964); *Townsend* v. *Bomar,* 331 F. 2d 19 (6th Cir. 1964); *Brubaker* v. *Dickson,* 310 F. 2d 30 (9th Cir. 1962); *De Rocke* v. *United States,* 337 F. 2d 606 (9th Cir. 1964); *Turner* v. *Maryland,* 318 F. 2d 852 (4th Cir. 1963); *Goforth* v. *United States,* 314 F. 2d 868 (10th Cir. 1963). And in *Cornell* v. *Superior Court,* 52 Cal. 2d 99, 102-03, 338 P. 2d 447, 449 (1959), the California Supreme Court said:

> If the attorney is not given a reasonable opportunity to ascertain the facts surrounding the charged crime so that he can prepare the proper defense, the accused's basic right to effective representation would be denied.

Thus, this case presents the important issue of not merely the right of an indigent defendant to counsel, but the obligation of state courts to ensure that the appointed counsel is able to do an adequate job of representation. That is, when the circumstances are such that a public defender's office, or other source of free legal aid, cannot provide adequate counsel, must the court appoint private attorneys with compensation or employ some other means to ensure adequate representation? Surely, *Gideon* requires that the substance and not merely the form of representation of indigents be assured. Therefore, that case means that state court judges must consider the actual circumstances surrounding the prosecution of indigents and to consider and utilize alternative methods of providing counsel where such action is necessary.

C. Petitioners Were Denied Due Process of Law by the Failure of Respondents to Provide for Counsel Immediately After Arrest.

In addition, this case raises the question of the obligation of state courts to provide indigents with counsel immediately or as soon after arrest as practicable and before any proceeding at which their rights might be affected.

The right to counsel is the right to be represented at every stage of the proceeding at which the rights of a defendant may be affected. *Hamilton* v. *Alabama,* 368 U. S. 52. Moreover, *Escobedo* v. *Illinois,* 378 U. S. 478, establishes the importance of the right in the period between arrest and arraignment.

Since *Gideon* v. *Wainwright,* 372 U. S. 335, establishes that the right to counsel cannot depend upon the ability of an accused to pay, it follows that an indigent must be afforded the same protection as one who has retained his own lawyer at *all* stages of the criminal process. Therefore, the state had an obligation to provide counsel after arrest and prior to the initial arraignment.

The experience of petitioner Proctor provides vivid proof of the necessity of such a rule. Proctor was arrested on August 14, 1965. He was arraigned four days later on August 18th. During the period between arrest and arraignment he saw no attorney and the arresting authorities made no effort to secure him legal aid. At arraignment he was unrepresented by counsel; no inquiry was made by the judge as to any prior convictions or present employment. Thus, bail was set at $4,950, which Proctor was unable to make. On August 20, 1965, a preliminary hearing was held. The public defender was appointed as counsel and had only a two-minute consultation with Proctor. Prob-

able cause to hold him for trial was found and bail was set at $2,500; again, he was unable to make this amount (R. pp. 14-16; App. A, pp. 12a-14a).

Proctor remained in jail for three months awaiting trial; he wrote many letters to the public defender asking for interviews, but was unsuccessful until October 3rd, when he had a six-minute interview with a lawyer from that office (R. p. 4; App. A, p. 13a). Finally, he was tried on November 17, 1965, found guilty of trespass and sentenced to *five days* in the county jail.

The case of this petitioner is not unique; he represents the class of more than 700 other persons in jail when this action was filed because they could not make bail. If counsel had been provided for them prior to arraignment, a proper amount of bail might have been set. These defendants require adequate counsel now to secure reductions in bail and to ensure that their pre-trial constitutional rights will not be lost.[6]

---

[6] The more than 500 juvenile offenders arrested also suffered from not having adequate counsel. According to a report issued by the Los Angeles County Probation Department in November, 1965, the Los Angeles County Juvenile Court considered 534 juvenile detention matters in two days. At least 382 were ordered detained with most being released before or at the disposition hearings held during the week of September 13, 1965. As of October 25, 1965, there were some juveniles still being held. The report does not indicate whether any juveniles were released on bail or were provided legal counsel. *Riot Participant Study: Juvenile Offenders,* Research Report No. 26, Los Angeles County Probation Department, November 1965, p. 31.

CONCLUSION

This action presents more than the question of the rights of the individual petitioners, important as those rights may be. It presents a crucial element of the relation between the state and those who because of poverty and neglect have been excluded from society, who have despaired of proceeding through lawful process, but who have now become caught up in the machinery of the law, the enforcer of the standards of that society. One commentator said, after the riots in Watts had ended:

> Politicians, psychologists, educators, civil rights leaders and hosts of others joined the sociologists in pondering the causes. They nearly all came up with the same answer: the frustration and utter hopelessness of the ghetto-locked Negro. Mozer, "There's No Easy Place to Pin the Blame," *Life*, vol. 59, No. 9, Aug. 27, 1965, pp. 31-33.[7]

The question here is whether a clearly established legal right will be applied in the only way it can be meaningful, or whether California and its courts will continue to sweep this issue under the rug.

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[7] For other comments on the causes of the Watts riots, see, e.g., "No Panacea," *The Christian Century*, Vol. LXXXII, No. 34, Aug. 25, 1965, pp. 1027, 1028; "Los Angeles: And Now What?", *America*, Vol. 113, No. 9, Aug. 28, 1965, p. 199.

WHEREFORE, for the foregoing reasons, petitioners pray that the writ of certiorari be granted.

Respectfully submitted,

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Attorneys for Petitioner

APPENDIX A

IN THE

SUPREME COURT OF CALIFORNIA

No. .....

DORIS WATKINS, LARRY D. ROBINSON, JANELLE HYLTON, and CLARENCE L. PROCTOR,

Petitioners,

—VS.—

THE SUPERIOR COURT, LOS ANGELES COUNTY, CALIFORNIA, and J. Howard Ziemann, Joseph L. Call, Fred P. Perraga, John G. Barnes, Vernon Spencer, Mark Brandler, Robert Clifton, Bernard Lawler, Joseph A. Wapner, Raymond Roberts, Bernard S. Selber, Richard S. C. Hayden, Edward C. Olson, Kathleen Parker, Mario L. Clinco, Joseph Sprankle, Jr., and Robert Feinerman as Judges,

THE MUNICIPAL COURT OF LOS ANGELES, CALIFORNIA, and Maurice T. Leader, Irwin J. Nebron and Philip M. Saeta as Judges

THE JUVENILE COURT OF LOS ANGELES COUNTY, CALIFORNIA, and William E. MacSaden as Judge.

Petition for Writ of Prohibition and Mandamus

To: The above-named Respondents as Judges of the Superior Court of Los Angeles County, California, and the Municipal Court of the City of Los Angeles, California and Juvenile Court, Los Angeles County, California. Now

come the Petitioners named herein and petition this Honorable Court for the issuance of a Writ of Prohibition and Mandamus directed to the Respondents for the causes and on the grounds named herein as follows:

1. Petitioners Doris Watkins, Larry D. Robinson, Janelle Hylton, and Clarence L. Proctor, are all Negro citizens of Los Angeles County, California, who were arrested and charged with crimes for participation in rioting occurring in Los Angeles County, California, between August 11 and August 20, 1965. Petitioners have had bail set in their initial arraignment, have completed their preliminary hearings, and have been given a date for trial. Petitioner Clarence L. Proctor is presently in custody in the Hall of Justice in Los Angeles, California. All other Petitioners are released on bail or on their own recognizance. Petitioners are indigent and unable to pay for the services of private counsel.

2. The Respondents are J. Howard Ziemann, Joseph L. Call, Fred P. Perraga, John G. Barnes, Vernon Spencer, Mark Brandler, Robert Clifton, Bernard Lawler, Joseph A. Wapner, Raymond Roberts, Bernard S. Selber, Richard S. Hayden, Edward C. Olson, Kathleen Parker, Mario L. Clinco, Joseph Spankle, Jr. and Robert Feinerman, Judges of the Superior Court, Los Angeles County, California; Maurice T. Leader, Irwin J. Nebron and Philip M. Saeta, Judges of the Municipal Court of the City of Los Angeles, California and William E. MacSaden, Judge of the Juvenile Court, Los Angeles County, California. Respondents Ziemann, Call, Perraga, Barnes, Spencer, Brandler, Clifton, Lawler, Wapner, Roberts, Selber, Hayden, Olson, Parker, Clinco, Spankle, and Feinerman are vested with

jurisdiction to conduct preliminary hearings, arraignment for pleas and trials of petitioners and other defendants charged with felony violations. Respondents Leader, Nebron, and Saeta have the authority to inform Petitioners and other defendants appearing in the Municipal Court of the charges placed against them, to set bail pending a preliminary hearing and to preside at the trials of defendants charged with misdemeanors. Respondent MacSaden conducts proceedings in the Juvenile Court for minors charged with misdemeanors and felonies. All of the said Respondents have the authority and duty to inform defendants of their right to counsel and to secure immediate appointment of counsel to indigent defendants who are financially unable to secure representation.

3. Respondents have failed to secure adequate legal representation for the indigent Petitioners in the following particulars:

(a) Respondent Judges of the Municipal Court failed to appoint private counsel or a public defender to represent Petitioners at the initial arraignment, and made no inquiry as to Petitioners' financial ability to retain counsel for this proceeding. Petitioners were given no time to secure counsel for said arraignments and were prejudiced thereby when Respondents set bail in the Municipal Court at two to three times the amount ordinarily set for defendants with like charges. Bail was set at excessive and discriminatory levels to insure Petitioners continued incarceration, thereby assuming the guilt of all Petitioners, prior to proof of the charges against them. The Petitioners, being without Counsel in said arraignments, were unable to

challenge the violations of their constitutional and statutory rights.

The facts of this allegation are supported by affidavits of Petitioners Watkins, Hylton, and Proctor, attached hereto.

(b) All of the said Respondents have failed and refused to appoint private counsel not associated with the Public Defender's office although the legal and investigative staff of the Public Defender's office has not been expanded sufficiently to give adequate time for preparation and investigation to defend Petitioners. Petitioners have had necessarily brief and cursory consultation with the public defenders in the pre-trial proceedings. (See affidavits of Petitioners Watkins, Hylton, and Proctor.) Neither of the Petitioners have been continuously represented by one public defender through the successive proceedings, resulting in each public defender having to freshly acquaint himself with the case when he receives it. (See affidavit of Petitioners Watkins, Hylton, and Proctor.) The Public Defender has never been required to handle the cases of over 4,000 defendants with multiple charges during a six-week period, such as occurred after the riots began. In September, 1965 the County Public Defender's Office disbanded and the authority of the County office was expanded to include misdemeanors as well as felonies. The County office absorbed the bulk of the City Staff, but the consolidation has not affected the total legal staff available to service the caseload. Private Counsel, associated with groups such as the National Association for the Advancement of Colored People, the American Civil Liberties Union, and the

United Civil Rights Committee have represented indigent persons without compensation. They have received more requests for representation from persons presently by the Public Defender's Office. (See affidavit of Petitioner Proctor.)

The above-named groups and the Los Angeles County Bar Association have furnished the Respondents with lists of attorneys who are willing to accept court appointment to represent indigent persons arrested in the riots. The Respondents have failed to make appointments of private counsel from these lists in sufficient numbers to relieve the overextended caseload of the Public Defender's Office, and have limited the appointment of private counsel to instances where there would be a conflict of interest for the Public Defender to represent the defendant. (See affidavit of Petitioner Robinson.)

4. Petitioners bring this suit as a class action on their behalf and on behalf of all other Negro persons in Los Angeles County arrested since August 11, 1965 for participation in rioting, who are similarly affected by the denial of adequate legal counsel. Petitioners allege on information and belief that over 4,000 persons have been charged with misdemeanors and felonies in circumstances similar to their own. The members of the class are so numerous as to make it impracticable to bring them all individually before this Court; there being common questions of law and fact involved, and common grievances arising out of common wrongs, and common relief is sought. The Petitioners fairly and adequately represent the interest of their class.

5. The Respondents lack jurisdiction to continue criminal or juvenile proceedings where indigent persons are denied legal counsel.

6. The members of Petitioners' class have no plain, adequate, and speedy remedy by appeal or in any other manner to secure adequate representation by counsel prior to trial. Public defenders representing indigent persons in Petitioners' class have not raised the objection that these parties are being denied counsel, and therefore criminal trials and juvenile proceedings are being conducted in which the deprivation of constitutional and statutory rights will not be raised. The members of the Petitioners' class are threatened with irreparable injury in that they face prosecution with the defense of private counsel who are uncompensated and without funds to make investigation, or are represented by the Public Defender's Office which is overextended. Unless this Court restrains the Respondents and orders the protection prayed for herein, Petitioners and members of the class will be tried in proceedings totally in violation of their constitutional and statutory rights, and deprived of equal protection of the laws in violation of the Fourteenth Amendment.

7. Petitioners file their application for Writ of Prohibition and Mandamus in this Court in the first instance because three of the Petitioners are to be tried in October, 1965, with Petitioner Robinson's trial to begin October 15, 1965. Petitioners allege on information and belief that the trials of other members of the class are in progress or will be conducted during the second week of October, 1965. Petitioners' application for Writ of Prohibition and Mandamus is of grave public importance, as it raises funda-

mental questions of the constitutionality and authority of the Respondents to proceed with criminal prosecutions of over 4,000 defendants.

WHEREFORE, your Petitioners pray that an alternative Writ of Prohibition and Mandamus issue out of and under the seal of this Honorable Court directed to the Respondents above named commanding them to:

1) Appoint counsel with adequate preparation, investigation and counseling before conducting any further proceedings;

2) Nullify any prior proceedings in which Petitioners or members of their class, after securing adequate counsel, can demonstrate they were prejudiced by the lack of counsel;

3) Furnish the members of Petitioners' class with lists of private counsel, if the Public Defender's Office is found to have an inordinate caseload, and to provide compensation for such counsel as are chosen by the indigent defendants.

In the alternative Petitioners pray that the Respondents be made to show cause before this Court, at a time and place to be fixed, why they should not be restrained and enjoined from taking any further proceedings in the causes mentioned herein, and for such other, further and additional relief as to the Court may seem just and proper in the premises.

STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES, *ss.*:

Doris Watkins, Janelle Hylton, Larry D. Robinson, and Clarence L. Proctor, being duly sworn, say: that they are the Petitioners in the above-entitled action; that they have read the foregoing petition for Writ of Prohibition and Mandamus, and know the contents thereof; that the facts alleged in the writs are true of their own knowledge, and all other matters stated in the writs are alleged on information or belief, and as to those matters they believe them to be true.

LARRY DIKE ROBINSON
Petitioner

MRS. JANELLE HYLTON
Petitioner

MRS. DORRIS WATKINS
Petitioner

Subscribed and sworn to before me this
6th day of October, 1965.

SID E. CAMPBELL
Notary Public
My Commission Expires May 26, 1967

CLARENCE PROCTOR
Petitioner

Subscribed and sworn to before me this
7th day of October, 1965.

ROBERT A. WARD, JR.
Notary Public
My Commission Expires July 11, 1967

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LEROY D. CLARK
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New York, New York

Attorneys for Petitioners

Affidavits

STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES, *ss.*:

I, Janelle Hylton, being duly sworn, deposes and says:

1. I am a Petitioner in the attached application for Writ of Prohibition and Mandamus and make these statements in support thereof.

2. I was arrested on Saturday, August 14, 1965 and was arraigned on Thursday, August 19, 1965. I was not represented by counsel at this arraignment and I was informed that I was charged with burglary, and my bail set at $4500. I was unable to meet the bail of $4500 and remained in jail until my preliminary hearing.

3. I appeared in court on Tuesday, August 24, 1965 for a preliminary hearing. Between my arraignment on Thursday, August 19, 1965, and until I arrived in court on Tuesday, August 24, 1965, I had not been interviewed by anyone from the Public Defender's office. At the preliminary hearing on Tuesday, August 24, 1965 the court appointed a public defender, and he interviewed me concerning my case for approximately five minutes. The court found probable cause for binding me over for trial, and I was released on my own recognizance.

4. On Wednesday, September 8, 1965, I reappeared in court to give my plea. The court assigned a public defender to me who talked with me about ten minutes concerning my financial status and the circumstances of my arrest. This

public defender was not the public defender who appeared with me at the preliminary hearing.

5. On Thursday, September 16, 1965 I reappeared in court and entered a plea of not guilty. The public defender who represented me on this date had not appeared with me at the preliminary hearing, nor was this the public defender whom I had talked with on Wednesday, September 8, 1965.

6. I received a letter from the Public Defender's office stating that Mrs. Florence Mills was assigned to defend me, and I called and have secheduled an appointment for Friday, October 8, 1965. During the entire period after my arrest and release on my own recognizance, no investigator from the Public Defender's office has called me or visited my home to make an investigation of the facts.

7. My trial is secheduled for November 10, 1965.

I, DORIS WATKINS, being duly sworn, deposes and says:

1. I am a Petitioner in the attached application for Writ of Prohibition and Mandamus and make these statements in support thereof.

2. I was arrested on Saturday, August 14, 1965 and taken for arraignment on Tuesday, August 17, 1965. I was informed I was charged with burglary and my bail was set at $4900. I was unable to meet bail. No attorney represented me at this proceeding.

3. I appeared in court on Friday, August 21, 1965 for the preliminary hearing. The court appointed a public de-

fender. He informed me that he didn't know anything about my case and didn't have time to talk to me about it. He said that he only wanted information in order to secure a reduction in my bail. He inquired only as to my name, my address, number of my children, and if I had any prior convictions. The court found probable cause for holding me for trial and bail was reduced to $250. I secured my release under this bail.

4. I reappeared in court on Monday, September 13, 1965, and entered a plea of not guilty. The public defender who appeared on my behalf had not represented me in any prior hearing.

5. A trial date was set for Monday, October 25, 1965.

6. I received a letter from the Public Defender's office and arranged an interview with a public defender on Wednesday, September 29, 1965. We talked for approximately 25 minutes concerning the circumstances of my arrest.

7. At no time after my arrest or to date has an investigator for the Public Defender's office interviewed me or inquired of me as to the facts of the charges against me.

I, CLARENCE L. PROCTOR, being duly sworn, deposes and says:

1. I am a Petitioner in the attached application for Writ of Prohibition and Mandamus and make these statements in support thereof.

2. I was arrested on Saturday, August 14, 1965 and arraigned on August 18, 1965. At the arraignment I was

informed that I was charged with burglary and bail was set at $4950. I was unrepresented by counsel at this proceeding and no inquiry was made as to my length of residence in the county, prior convictions, or present employment. I was unable to pay the bail for release.

3. I reappeared in court on Friday, August 20, 1965 for a preliminary hearing. The court, at the start of this proceeding, appointed a public defender to represent me. I had had no interview with the public defender or with any investigator from the Public Defender's office prior to the start of this proceeding. The public defender consulted with me approximately two minutes concerning the circumstances of my arrest. The court found probable cause to hold me for trial. Bail was reduced to $2500. I was unable to meet the reduced bail and presently continue in custody.

4. On Friday, September 3, 1965 a man from the Public Defender's office who was not a public defender, gave me forms to fill out to secure my release on my own recognizance.

6. My trial is set for October 29, 1965. After the preliminary hearing on Friday, August 20, 1965 until Sunday, October 3, 1965, no one from the Public Defender's office interviewed me, although I wrote letters to the Public Defender's office requesting consultation to prepare my defense. When the public defender did visit me on October 3, 1965 he informed me that he had been very busy and was therefore unable to consult with me earlier. We talked for approximately five or six minutes. During the period

prior to October 3, 1965, when I saw no one from the Public Defender's office, I wrote to the N.A.A.C.P. requesting legal assistance.

7. No investigator from the Public Defender's office has visited me to secure facts concerning the charges against me.

I, LARRY D. ROBINSON, being duly sworn, deposes and says:

1. I am a Petitioner in the attached application for Writ of Prohibition and Mandamus and make these statements in support thereof.

2. I was arrested on Thursday, August 12, 1965 and was bailed out Friday, August 13, 1965, bail being set at $250.

3. I was arraigned on Wednesday, August 18, 1965 and was informed that I was charged with the misdemeanor of disturbing the peace. I pleaded not guilty and bail was set at $1000. I was unrepresented in this proceeding.

4. On Saturday, August 21, 1965 I was bailed out again. I reappeared in court on September 7, 1965 for a preliminary hearing. I informed the court I wanted to seek counsel at the N.A.A.C.P. The Judge urged me, even after I made known my desire to seek representation by the N.A.A.C.P., to accept the representation of the Public Defender's office. I refused the appointment of the public defender.

5. I have made contact with private counsel of the N.A.A.C.P. and desire their representation. I am not able to pay private counsel.

6. My trial is scheduled for October 15, 1965.

IN THE

DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT DIVISION TWO
Minutes of Division Two

October 18, 1965

Civil No. 29877

WATKINS, ET AL.

—VS.—

SUPERIOR COURT OF LOS ANGELES COUNTY

The Court: Petition for writ of prohibition and mandate denied.

IN THE

SUPREME COURT OF CALIFORNIA

[Names of parties omitted]

Petition for Hearing

Comes now the petitioners named herein and petition this Honorable Court to grant a hearing for review of the denial by the District Court of Appeals, Second District, of petitioners' writ of prohibition and mandamus. As grounds for such relief, petitioners state the following:

1. Petitioners' writ of prohibition and mandamus, filed in this court on October 8, 1965, was transferred to the District Court of Appeals, Second District, on October 11, 1965.

2. The District Court of Appeals on October 18, 1965 denied the petition for writ of prohibition and mandamus, without opinion. A copy of the order of the court is attached hereto.

3. The petitioners are four indigent Negro persons charged with crimes for participating in riots occurring in Los Angeles County, California between August 11 and 20, 1965. The writ of prohibition and mandamus was directed to the Municipal Court of the City of Los Angeles, California, the Superior Court and the Juvenile Court of Los Angeles County, which courts have the responsibility

of conducting adult and juvenile proceedings on charges against all persons arrested in the riots.

4. Petitioners filed the Writ of Prohibition and Mandamus as a class action on behalf of themselves and all other Negro persons arrested in the riots who are being tried before the respondents. The Petition alleged the following facts, which facts are more particularized in a copy of the Writ of Prohibition attached hereto:

a. Petitioners and other indigent defendants were subjected to excessive and discriminatory bail at their initial arraignment and were unrepresented during or prior to this proceeding.

b. Respondents have sought to have the Public Defender's Office carry the burden of representing the bulk of over 4,000 defendants with multiple charges in pre-trial and trial proceedings in which the Public Defender's Office had not had sufficient time or personnel to prepare, consult with the defendant or investigate the charges to conduct an adequate defense. Private associations such as the N.A.A.C.P. have undertaken a portion of the representation of indigent defendants without compensation and have received no funds to conduct adequate investigations. These private associations and the Los Angeles County Bar Association have furnished the respondents with lists of attorneys willing to accept court appointments to represent the members of petitioners' class, but respondents failed to make use of this source of representation in sufficient numbers to relieve the overextended case load of the Public Defender's Office.

c. Minors have been tried in Juvenile Court without adequate counsel from the Public Defender's Office, or without representation by any attorney.

5. The Petition for Writ of Prohibition and Mandamus asserts that the respondents have failed to secure adequate legal representation for petitioners and other indigent defendants in violation of the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution, Article I, Section 2 of the California Constitution and state statutes governing appointment of counsel. In particular, respondents have violated petitioners' rights in the following manner:

a. The Juvenile Court has failed to appoint counsel for every indigent juvenile who is charged with the commission of a misdemeanor or felony.

b. The Municipal Court, and judges from the Superior Court sitting as Municipal judges, failed to secure indigent persons counsel prior to the arraignment held immediately after their arrest.

c. Petitioners and members of their class have not been accorded a right to counsel equal to that accorded to indigent defendants arrested and tried prior to the riots of August 11, 1965.

d. Appointment of the public defender was inadequate as there was insufficient time for consultation and investigation to conduct a proper defense.

e. Respondents failed to appoint private counsel although the Public Defender's Office was not staffed to service the inordinate number of criminal cases arising over a two to three-week period.

f. Respondents failed to accord indigent defendants court-appointed counsel of their own choosing where such defendants did not wish to be represented by the public defender.

6. Writ of Mandamus will lie since respondents have failed to perform the duty enjoined upon them by law to appoint adequate counsel to petitioners and other indigent defendants. Writ of prohibition will lie since respondents lack jurisdiction to conduct juvenile or criminal proceedings without acquiring adequate legal representation for persons unable to afford private counsel.

7. Petitioners request a hearing to settle serious questions of law concerning the nature and scope of the rights of over 4,000 indigent defendants to adequate legal representation.

Respectfully submitted,

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Attorneys for Petitioners

Order Due
November 17, 1965

Order Denying Hearing

AFTER JUDGMENT BY DISTRICT COURT OF APPEAL
2nd District, Division 2, Civil No. 29877

IN THE
SUPREME COURT
OF THE STATE OF CALIFORNIA
IN BANK

WATKINS

—v.—

SUPERIOR COURT OF THE COUNTY OF LOS ANGELES

..... petition for hearing DENIED.

FILED Nov 3—1965

TRAYNOR, *Chief Justice*

APPENDIX B

California Statutes Involved

Calif. Penal Code §858:

> *Informing Accused of Nature of Charge and Right to Counsel.*—When the defendant is brought before the magistrate upon an arrest, either with or without warrant, on a charge of having committed a public offense, the magistrate must immediately inform him of the charge against him, and of his right to the aid of counsel in every stage of the proceedings. If it appears that the defendant may be a minor, the magistrate shall ascertain whether such is the case, and if the magistrate concludes that it is probable that the defendant is a minor, . . . he shall immediately either notify the parent or guardian of the minor, by telephone or messenger, of the arrest, or appoint counsel to represent the minor.

Calif. Penal Code §859:

> *Time to Procure Counsel.*—When the defendant is charged with the commission of a public offense, over which the superior court has original jurisdiction, by a written complaint subscribed under oath and on file in a court within the county in which the public offense is triable, he shall, without unnecessary delay, be taken before a magistrate of the court in which such complaint is on file. The magistrate shall immediately deliver to him a copy of the complaint, inform him of his right to the aid of counsel, ask him if he desires the

aid of counsel, and allow him a reasonable time to send for counsel; and the magistrate must, upon the request of the defendant, require a peace officer to take a message to any counsel whom the defendant may name, in the judicial district in which the court is situated. The officer must, without delay and without fee, perform that duty. If the defendant desires and is unable to employ counsel, the court must assign counsel to defend him. If it appears that the defendant may be a minor, the magistrate shall ascertain whether such is the case, and if the magistrate concludes that it is probable that the defendant is a minor, he shall immediately either notify the parent or guardian of the minor, by telephone or messenger, of the arrest, or appoint counsel to represent the minor.

Calif. Penal Code §859a:

Felony Plea Before Magistrate. If the public offense charged is a felony not punishable with death, the magistrate shall immediately upon the appearance of counsel for the defendant read the complaint to the defendant and ask him whether he pleads guilty or not guilty to the offense charged therein and to a previous conviction or convictions of crime if charged; thereupon, or at any time thereafter, while the charge remains pending before the magistrate and when his counsel is present, the defendant may, with the consent of the magistrate, and the district attorney or other counsel for the people, plead guilty to the offense charged or to any other offense the commission of which is necessarily included in that with which he is charged, or to an attempt to commit the offense charged

and to the previous conviction or convictions of crime if charged; and upon such plea of guilty, the magistrate may then fix a reasonable bail as provided by this code, and upon failure to deposit such bail or surety, shall immediately commit the defendant to the sheriff and certify the case, including a copy of all proceedings therein and such testimony as in his discretion he may require to be taken, to the superior court, and thereupon such proceedings shall be had as if such defendant had pleaded guilty in such court. The foregoing provisions of this section shall not be construed to authorize the receiving of a plea of guilty from any defendant not represented by counsel. . . .

Calif. Penal Code §987:

Defendant, on Arraignment to Be Informed of His Right to Counsel, When Court to Assign Counsel. If the defendant appears for arraignment without counsel, he must be informed by the court that it is his right to have counsel before being arraigned, and must be asked if he desires the aid of counsel. If he desires and is unable to employ counsel, the court must assign counsel to defend him.

Calif. Penal Code §987a:

Compensation of Counsel by County. In any case in which counsel is assigned in the superior court to defend a person, including a person who is a minor, who is charged therein with the commission of a crime, or is assigned in a municipal or justice's court, or justice court as established pursuant to the Municipal and Justice Court Act of 1949, to represent such a

person on a preliminary examination in such a court and who desires but who is unable to employ counsel, such counsel, in a county, or city and county, in which there is no public defender, or in a case in which the court finds that because of conflict of interest or other reasons the public defender has properly refused to represent the person accused, shall receive a reasonable sum for compensation and for necessary expenses, the amount of which shall be determined by the court in accordance with this section, to be paid out of the general fund of the county.

* * * * *

Counsel shall be appointed to represent, in the municipal or justice court, a person who desires but is unable to employ counsel, when it appears that such appointment is necessary to provide an adequate and effective defense for defendant.

California Code of Civil Procedure §1084:

Defined.—The writ of mandamus may be denominated the writ of mandate.

California Code of Civil Procedure §1085:

Power to Issue—Municipal Court.—It may be issued by any court, except a municipal or justice court, to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board, or person.

California Code of Civil Procedure §1086:

> *Duty to Issue Mandatory.*—The writ must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law. It must be issued upon the verified petition of the party beneficially interested.

California Code of Civil Procedure §1102:

> *Nature and Effect of Writ.*—The writ of prohibition is the counterpart of the writ of mandate. The writ of prohibition arrests the proceedings of any tribunal, corporation, board, or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person.

California Code of Civil Procedure §1103:

> *Power to Issue—Municipal Court.*—It may be issued by any court, except municipal or justice courts, to an inferior tribunal or to a corporation, board, or person, in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. It is issued upon the verified petition of the person beneficially interested.

SUBJECT INDEX

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Amount of time spent advising clients, and change of attorneys must be related to the individual case 5

VI.

An extreme case of inadequacy of counsel must be shown to show a violation of constitutional rights 6

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IN THE

Supreme Court of the United States

October Term 1965
No. 784

DORIS WATKINS, LARRY D. ROBINSON, JANELLE HYLTON, and CLARENCE L. PROCTOR,

Petitioners,

vs.

THE SUPERIOR COURT, LOS ANGELES COUNTY CALIFORNIA, and J. HOWARD ZIEMANN, JOSEPH L. CALL, ALFRED P. PERACCA, JOHN G. BARNES, VERNON SPENCER, MARK BRANDLER, ROBERT CLIFTON, BERNARD LAWLER, JOSEPH A. WAPNER, RAYMOND ROBERTS, BERNARD S. SELBER, RICHARD F. C. HAYDEN, EDWARD C. OLSON, KATHLEEN PARKER, MARIO L. CLINCO, JOSEPH SPRANKLE, JR., and ROBERT FEINERMAN as Judges,

THE MUNICIPAL COURT, LOS ANGELES COUNTY, CALIFORNIA, and MAURICE T. LEADER, IRWIN J. NEBRON and PHILIP M. SAETA as Judges,

THE JUVENILE COURT OF LOS ANGELES COUNTY, CALIFORNIA, and WILLIAM E. MacFADEN as Judge.

OPPOSITION TO WRIT OF CERTIORARI.

Comes Now the respondents The Superior Court of the State of California, for the County of Los Angeles (including the Juvenile Court thereof) and The Municipal Court of the Los Angeles Judicial District, together with the judges of said courts named in the within petition, and the People of California the real party in interest, and by way of opposition to the issuance of a writ of certiorari in this matter set forth as follows:

I.

No Federal Question Was Presented to the Courts of the State of California.

The record as to each petitioner in the trial court (Superior Court) indicates clearly that no motion to relieve the Public Defender was made in that court. Further, the record is clear that the Superior Court was not informed that any petitioner believed himself to be inadequately represented and even at the present time the trial court has not been given an opportunity to rule on this claim.

California law provides an orderly and adequate procedure by which claims of inadequate counsel may be tested. Section 995 of the Penal Code provides as follows:

> "[*When indictment or information must be set aside.*] The indictment or information must be set aside by the court in which the defendant is arraigned, upon his motion, in either of the following cases:
>
> If it be an indictment:
>
> 1. Where it is not found, endorsed, and presented as prescribed in this code.
>
> 2. That the defendant has been indicted without reasonable or probable cause.
>
> If it be an information:
>
> 1. That before the filing thereof the defendant had not been legally committed by a magistrate.
>
> 2. That the defendant had been committed without reasonable or probable cause."

The propriety of a denial of such a motion may thereafter be tested by a petition for a writ of prohibition. The motion which is authorized by Section 995 of the Penal Code was not made on behalf of any of these petitioners. Since the question of inadequacy of counsel was not before the trial court, the California Appellate Courts properly denied the purported Petition for Prohibition and Mandate which was presented to them. Until the trial court has acted upon an issue there is nothing for the higher court to prohibit. (*Shaffer v. Justice Court* (1960), 185 Cal. App. 2d 405, 8 Cal. Rptr. 269; *In re Bell* (1942), 19 Cal. 2d 488, 122 P. 2d 22.) Under these circumstances, no federal issue has been properly raised in any court of the State of California.

II.

Petitioners Have Failed to Exhaust Presently Available Remedies.

Any claim which petitioners wish to raise relative to their cases should be made first in the trial court, then be reviewed by the District Court of Appeal on prohibition. However, where petitioners' counsel failed to follow the statutory procedures as outlined above, the California Appellate Courts still permit a remedy. Thus, in the matter of *In re Joiner* (1959), 180 Cal. App. 2d 250, 4 Cal. Rptr. 667, prohibition was not available since there was a failure to file a petition within the statutory fifteen day period after the denial of a motion in the trial court. Consequently, that petitioner sought habeas corpus and appropriate relief was granted. The remedy of habeas corpus is still available to petitioners in California. Since inadequacy of counsel would result in the defendant not being